



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2012-0960; FRL-9766-5]

Revisions to the California State Implementation Plan, Imperial  
County Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Imperial County Air Pollution Control District (ICAPCD) portion of the California Implementation Plan (SIP). These revisions concern local rules that regulate inhalable particulate matter (PM<sub>10</sub>) emissions from sources of fugitive dust such as unpaved roads and disturbed soils in open and agricultural areas in Imperial County. We are proposing to approve local rules that regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Any comments must arrive by [Insert date 30 days from the date of publication in the Federal Register].

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2012-0960, by one of the following methods:

1. Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions.

2. E-mail: [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).

3. Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through [www.regulations.gov](http://www.regulations.gov) or e-mail. [www.regulations.gov](http://www.regulations.gov) is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

*Docket:* Generally, documents in the docket for this action are available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco,

California. While all documents in the docket are listed at [www.regulations.gov](http://www.regulations.gov), some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Christine Vineyard, EPA Region IX, (415) 947-4125, [vineyard.christine@epa.gov](mailto:vineyard.christine@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us" and "our" refer to EPA.

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#### I. The State's Submittal

##### A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB)

Table 1 - Submitted Rules

Local Agency	Rule #	Rule Title	Adopted	Submitted
ICAPCD	800	General Requirements for Control of Fine Particulate Matter (PM10)	10/16/12	11/07/12
ICAPCD	804	Open Areas	10/16/12	11/07/12
ICAPCD	805	Paved and Unpaved Roads	10/16/12	11/07/12
ICAPCD	806	Conservation Management Practices (CMPs)	10/16/12	11/07/12

On November 21, 2012, EPA determined that the submittal for ICPACD Rules 800, 804, 805 and 806 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

##### B. Are there other versions of these rules?

We finalized a limited approval and limited disapproval of

an earlier version of the submitted rules on July 8, 2010 (75 FR 39366). That action incorporated Rules 800, 804, 805 and 806 into the California SIP, including those provisions identified as deficient.

C. What is the purpose of the submitted rule revisions?

PM<sub>10</sub> contributes to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires States to submit regulations that control PM<sub>10</sub> emissions.

ICAPCD's Regulation VIII consists of seven interrelated rules designed to limit emissions of PM<sub>10</sub> from anthropogenic fugitive dust sources in Imperial County.

Rule 800, General Requirements for Control of Fine Particulate Matter, provides definitions, a compliance schedule, exemptions and other requirements generally applicable to all seven rules. It requires the U.S. Bureau of Land Management (BLM), U.S. Border Patrol (BP) and DPR to submit dust control plans (DCP) to mitigate fugitive dust from areas and/or activities under their control. Appendices A and B describe methods for determining compliance with opacity and surface stabilization requirements in Rules 801 through 806.

Rule 801, Construction and Earthmoving Activities, establishes a 20% opacity limit and control requirements for construction and earthmoving activities. Affected sources must submit a DCP and comply with other portions of Regulation VIII regarding bulk materials, carry-out and track-out, and paved and unpaved roads. The rule exempts single family homes and waives the 20% opacity limit in winds over 25 mph under certain conditions.

Rule 802, Bulk Materials, establishes a 20% opacity limit and other requirements to control dust from bulk material handling, storage, transport and hauling.

Rule 803, Carry-Out and Track-Out, establishes requirements to prevent and clean-up mud and dirt transported onto paved roads from unpaved roads and areas.

Rule 804, Open Areas, establishes a 20% opacity limit and requires land owners to prevent vehicular trespass and stabilize disturbed soil on open areas larger than 0.5 acres in urban areas, and larger than three acres in rural areas. Agricultural operations are exempted.

Rule 805, Paved and Unpaved Roads, establishes a 20% opacity limit and control requirements for unpaved haul and access roads, canal roads and traffic areas that meet certain size or traffic thresholds. It also prohibits construction of

new unpaved roads in certain circumstances. Single family residences and agricultural operations are exempted.

Rule 806, Conservation Management Practices, requires agricultural operation sites greater than 40 acres to implement at least one conservation management practice (CMP) for each of several activities that often generate dust at agricultural operations. In addition, agricultural operation sites must prepare a CMP plan describing how they comply with Rule 806, and must make the CMP plan available to the ICAPCD upon request.

EPA approved versions of all of these rules on July 8, 2010, but required revisions only to Rules 800, 804, 805 and 806. As a result, ICAPCD did not revise or resubmit Rules 801, 802 or 803.

ICAPCD Rules 800, 804, 805 and 806 were revised primarily to:

- Clarify and strengthen requirements for recreational off-highway vehicle (OHV) activity;
- Demonstrate BACM;
- Clarify the definition of disturbed surface area and conservation management practice (CMP);
- Verify responsibility for stabilizing public unpaved roads in the county by the Imperial County Department of Public Works;

- Include opacity limits and stabilization requirements for high-traffic unpaved agricultural roads and traffic areas;
- Add CMP requirements for cropland-others, windblown dust control and agricultural tilling and harvesting; and
- Remove the exemption for border patrol roads.

EPA's technical support document (TSD) has more information about these rules.

## **II. EPA's Evaluation and Action**

### **A. How is EPA evaluating the rules?**

Generally, SIP rules must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193). In addition, SIP rules must implement Reasonably Available Control Measures (RACM), including Reasonably Available Control Technology (RACT), in moderate PM<sub>10</sub> nonattainment areas, and Best Available Control Measures (BACM), including Best Available Control Technology (BACT), in serious PM<sub>10</sub> nonattainment areas (see CAA sections 189(a)(1) and 189(b)(1)). The ICAPCD regulates a PM<sub>10</sub> nonattainment area classified as serious (see 40 CFR part 81), so Rules 800, 804, 805 and 806 must implement BACM.

Guidance and policy documents that we use to evaluate enforceability and BACM requirements consistently include the following:



1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 Federal Register Notice," (Blue Book), notice of availability published in the May 25, 1988 Federal Register.
  2. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
  3. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
  4. "State Implementation Plans for Serious PM-10 Nonattainment Areas, and Attainment Date Waivers for PM-10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 59 FR 41998 (August 16, 1994).
  5. "PM-10 Guideline Document," EPA 452/R-93-008, April 1993.
  6. "Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures," EPA 450/2-92-004, September 1992.
- B. Do the rules meet the evaluation criteria?
- We believe these rules are consistent with the relevant

policy and guidance regarding enforceability, BACM, and SIP relaxations. The revised rules adequately address all deficiencies identified in our July 8, 2010 (75 FR 39366) final limited disapproval of a previous version of these rules. Rules 801, 802, and 803 were approved in the July 8, 2010 rulemaking as meeting BACM requirements and are not affected by this action. The TSD has more information on our evaluation.

C. Reasonable Control for Exceptional Events.

EPA's preliminary view is that the Regulation VIII rules as revised in October 2012 constitute reasonable control of the sources covered by Regulation VIII for the purpose of evaluating whether an exceedance of the PM<sub>10</sub> NAAQS is an exceptional event pursuant to the exceptional events rule, including reasonable and appropriate control measures on significant contributing anthropogenic sources. This statement does not extend to exceedances of NAAQS other than the PM<sub>10</sub> NAAQS, or to events that differ significantly in terms of meteorology, sources, or conditions from the events that were at issue in EPA's July 2010 final action and associated litigation. EPA is not making any determinations at this time with respect to any specific PM<sub>10</sub> exceedances.

D. EPA recommendations to further improve the rules.

The TSD describes additional rule revisions that we

recommend for the next time the local agency modifies the rules but are not currently the basis for rule disapproval.

E. Public comment and final action.

Because EPA believes the submitted rules fulfill all relevant requirements, we are proposing to fully approve them as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these rules into the federally enforceable SIP. If finalized as proposed, this action would permanently terminate all sanctions and FIP implications associated with the July 8, 2010 final action.

**III. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve State law as meeting Federal requirements and does not impose additional requirements beyond

those imposed by State law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995

(15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

**AUTHORITY:** 42 U.S.C. 7401 *et seq.*

Dated: December 17, 2012

Jared Blumenfeld,  
Regional Administrator,  
Region IX.

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